

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Plainview, NY, Employer**

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**Docket No. 17-0289  
Issued: June 9, 2017**

*Appearances:*

*William Bothwell, for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 21, 2016 appellant, through his representative, filed a timely appeal from an October 3, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant timely requested oral argument before the Board. By order dated April 20, 2017, the Board exercised its discretion and denied the request finding that the issues could properly be adjudicated based on the evidence of record. *Order Denying Oral Argument*, Docket No. 17-0289 (issued April 20, 2017).

## **ISSUE**

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted December 9, 2014 employment incident.

## **FACTUAL HISTORY**

On December 9, 2014 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his lower back when he slipped on mud. On the claim form a supervisor noted that, during an investigation, no mud was found.

In a letter dated December 17, 2014, the employing establishment challenged appellant's claim. It noted that before the incident appellant had been involved in an argument with supervisors over being tracked on his route and the time he could take a lunch break. An hour into appellant's route he claimed that he slipped on mud and hurt his back. An investigation was completed by supervisors who found no mud at the described location or on his clothing. The supervisors also noted that the date of injury was appellant's first day back to work after being on leave due to nonwork-related sciatica.

On December 12, 2014 Dr. Matthew Goldstein, Board-certified in orthopedic surgery, examined appellant and diagnosed a coccygeal fracture and trace retrolisthesis at L4-5 with extension. He noted that appellant reported a fall at work on December 9, 2014, landing on his backside.

By letter dated December 22, 2014, OWCP informed appellant of the evidence needed to establish his claim. It noted that he had not submitted sufficient medical or factual evidence in support of his claim. Appellant was afforded 30 days to submit this additional evidence.

In a report dated December 26, 2014, Dr. Goldstein examined x-rays of appellant's lumbosacral spine and diagnosed lumbar pain with radiculopathy, L4-5 trace retrolisthesis, and a coccygeal fracture. He also noted that appellant was out of work because no light-duty positions were available with the employing establishment. Dr. Goldstein recommended that appellant stay out of work until further notice.

By decision dated January 30, 2015, OWCP denied appellant's claim. It found that he had failed to establish that the incident of December 9, 2014 occurred as described, due to discrepancies in his statement regarding how he fell.

In a work status note dated January 16, 2015, Dr. Goldstein diagnosed a fractured coccyx, degenerative lumbar spondylolisthesis, and lumbar radiculopathy. He recommended that appellant stay out of work until further notice.

On February 20, 2015 appellant requested an oral hearing before an OWCP hearing representative. The hearing was held on July 21, 2015. At the hearing appellant described the events of December 9, 2014 stating that he had been instructed to take all obvious shortcuts. Walking alongside a flower bed on a dirt path, while it was raining, he stepped on wet dirt and slipped. Appellant noted that he was wearing his rubber raincoat, rubber boots, and rubber rain pants at the time, and that the reason his clothes were clean after the incident was that they were

made of rubber and it was raining, so the dirt washed off. He explained that he never claimed that he fell on a concrete walkway or sidewalk.

In a report dated August 13, 2015, Dr. Goldstein reiterated appellant's history of injury, noting that he sustained a fall at work on December 9, 2014 and landed on his backside. He noted that since that time appellant had experienced severe low back and buttock pain, mostly on the left.

By decision dated September 8, 2015, the hearing representative affirmed OWCP's prior decision of January 30, 2015. She concurred with OWCP's prior determination that the facts surrounding appellant's fall were suspect.

By letter dated July 6, 2016, appellant, through his representative, requested reconsideration of OWCP's September 8, 2015 decision. He argued that the employing establishment had made contradictory factual claims, noting that the employing establishment first claimed that the event did not occur, then disciplined appellant for committing an unsafe act leading to his fall and injury. The representative reiterated appellant's statement as to how the injury occurred. He noted that the only condition claimed to have been caused by the fall was the coccygeal fracture.

By letter dated May 5, 2016, Dr. Goldstein opined that appellant sustained a fall at work on December 9, 2014 that resulted in a coccygeal fracture. He described appellant falling at work and landing on his backside. Dr. Goldstein noted that x-rays revealed a coccygeal fracture, and explained that appellant sustained the fracture following the fall. He noted, "In my opinion, [appellant's] current condition/coccygeal fracture is causally related to the work-related injury/fall which occurred on December 9, 2014."

By decision dated October 3, 2016, OWCP noted that the employing establishment was no longer disputing that the slip and fall occurred as alleged, but rather was disputing whether appellant worked in a safe manner. It therefore found that he had established the factual components of his claim, but denied his claim finding that he had not submitted sufficient medical evidence to establish a causal relationship between the fall on December 9, 2014 and his claimed conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>5</sup> was sustained in the performance of

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.<sup>7</sup>

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and compensable employment factors.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>12</sup>

### ANALYSIS

Appellant alleged that on December 9, 2014 he sustained a fall at work that resulted in a fractured coccyx. OWCP denied his claim finding that he had failed to submit sufficient medical

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<sup>6</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>8</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D’Wayne Avila*, 57 ECAB 642, 649 (2006).

<sup>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

evidence to establish a causal relationship between his claimed condition and the fall of December 9, 2014. The Board finds that appellant has not met his burden of proof.

Dr. Goldstein initially reported on December 12, 2014 that appellant had fallen at work on December 9, 2014, landing on his backside. He diagnosed coccygeal fracture and trace retrolisthesis at L4-5. OWCP received reports dated December 26, 2014 and January 16, 2015 wherein Dr. Goldstein reiterated these diagnoses. He did not however offer any opinion regarding causal relationship in these reports.<sup>13</sup> By report dated May 5, 2016, Dr. Goldstein opined that appellant sustained a fall at work on December 9, 2014 that resulted in a coccygeal fracture. He described appellant falling at work and landing on his backside. Dr. Goldstein noted that x-rays revealed a coccygeal fracture, and explained that appellant sustained the fracture following the fall. He noted, “In my opinion, [appellant’s] current condition/coccygeal fracture is causally related to the work-related injury/fall which occurred on December 9, 2014.”

Appellant alleged that he slipped in mud while walking alongside a flower bed. He specifically stated that he did not fall on concrete or a sidewalk. It is unclear from Dr. Goldstein’s report whether he had a complete factual history regarding appellant’s fall as he did not describe appellant’s fall in any detail. As his report does not contain an accurate and complete history of appellant’s injury, his opinion is of limited probative value.<sup>14</sup>

The Board has also held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>15</sup> Dr. Goldstein provided a conclusory opinion, but did not explain how the December 9, 2014 work incident could have caused or aggravated the diagnosed conditions. His May 5, 2016 report contains a medical opinion that the fall caused the fracture and a brief explanation of the fall itself. This is insufficient to establish appellant’s claim because Dr. Goldstein’s opinion lacks a detailed explanation as to how the fall caused the coccygeal fracture.<sup>16</sup>

As appellant has not submitted any sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to a work-related incident of December 9, 2014, he has not met his burden of proof to establish his claim.<sup>17</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>13</sup> The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee’s condition or disability is of limited probative value. *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>14</sup> See *Robert L. Lawson, Jr.*, Docket No. 95-2933 (issued September 23, 2997).

<sup>15</sup> *N.L.*, Docket No. 17-0454 (issued April 6, 2017).

<sup>16</sup> See *W.N.*, Docket No. 16-1722 (issued March 22, 2017).

<sup>17</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted December 9, 2014 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board